

REMARKS

Claims 2-15 are pending in the present application. The Office Action rejected claims 2-15 under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action also rejected claims 2-15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. 2003/0207245 (hereinafter "*Parker*") in view of U.S. Patent No. 6,233,618 (hereinafter "*Shannon*") in further view of an article entitled "NETOPIA: Netopia to bring parental control, content filtering and family security services to broadband service providers; Next-generation home networking solutions to enable broadband service providers to increase revenue and reduce costs while improving end-user satisfaction" (hereinafter "*Netopia*").

For at least the reasons set forth below, Applicant respectfully traverses these bases for rejection, requests withdrawal of the cited rejections, and favorable action by the Examiner.

1. Doubling Patenting

Applicant makes a note of the provisional doubling patenting rejection of claims 2-3 and 5 and will address it when the rejection is made formal.

2. 35 U.S.C. § 112

The Office Action indicated the rejection pursuant to § 112 was because it is not clear whether the claimed invention is directed to creating of user accounts with a level of filtering of contents, to monitoring and filtering of contents assessed by the users based on their user account, or to monitoring and filtering of emails accessed by users, or, something else.

Applicant respectfully traverses this basis of rejection because the claims particularly point out and distinctly claim the subject matter which Applicant regards as its invention. The claimed invention is not merely directed to the subject matter articulated in the rejection. Rather, the claimed invention is directed to creating a user account associated with at least one of a plurality of levels of a hierarchy, where the user account controls filtering and monitoring applied to other user accounts associated with levels below the level associated with the user account. Claim 2 therefore particularly points out and distinctly claims a method for filtering and monitoring web browsing in a multi-level system for a plurality of users, where the method comprises creating such a user account.

Claims 3-15 depend either directly or indirectly from claim 2 and recite additional limitations thereto that further define, particularly point out, and distinctly claim the subject matter which Applicant regards as its invention. Applicant therefore respectfully traverses this basis of rejection and requests withdrawal of the same.

3. 35 U.S.C. § 103(a)

a. Claims 2-15

In contrast, *Parker* is directed to a system and method for presenting a student user a modularized course via a network. *Parker*, Abstract. As noted in the Office Action, *Parker* does not disclose filtering and monitoring of a data transmission. Additionally, *Parker* does not disclose establishing a hierarchy for a plurality of levels, where each level is able to inherit any filtering and monitoring of levels above. *Parker* therefore does not disclose creating a user account associated with at least one of the plurality of levels of a hierarchy, where the user account controls filtering and monitoring applied to other user accounts associated with levels below the level associated with the user account.

Shannon is directed to an access control technique to limit access to information content. *Shannon*, Abstract. *Netopia* is directed to parental control, content filtering, and family security services for broadband service providers. *Netopia*, p. 1. However, neither *Shannon* nor *Netopia* discloses establishing a hierarchy for a plurality of levels, where each level is able to inherit any filtering and monitoring of levels above. In fact, the Office Action recognizes that none of *Parker*, *Shannon*, and *Netopia* discloses such a hierarchy but, instead, states that “[i]t is old and known to one of ordinary skill in the art that professors have higher authority than [sic] TA’s who have higher authority than end users, and ... it would have been obvious to one of ordinary skill in the art to modify assign [sic] different level [sic] to different type [sic] of users such that the user with lower authority will have access to subset [sic] of the user with the higher authority.” Even assuming this statement to be correct (an assumption with which Applicant does not agree), the statement is directed to a limitation that is not included in claim 2. Specifically, claim 2 calls for establishing a hierarchy wherein each level is able to inherit any filtering and monitoring of the levels above and a user associated with one level controls filtering and monitoring applied to other user accounts associated with levels below the one level. This is not the same thing as one user having access to a subset of the a user of higher authority and is different from assigning one level to a different type of user such that a user with lower authority has access to a subset of the user with the higher authority.

Even if the statement were directed to a limitation found in claim 2, rejections that state facts not in the record or rely on common knowledge in making a rejection should be judiciously applied and “should be rare.” Manual of Patent Examining & Procedure (hereinafter “MPEP”) § 2144.03. “[T]he notice of facts beyond the record which may be

taken by the examiner must be 'capable of such instant and unquestionable demonstration as to defy dispute.'" *In re Ahlert*, 424 F.2d 1088, 1091 (C.C.P.A. 1970) (citations omitted). It is inappropriate for an Office Action to take official notice of facts without citing a prior art reference where the facts asserted to be well-known are not capable of instant and unquestionable demonstration as being well-known. MPEP § 2144.03. It is even more inappropriate in the instant case where the Office Action has identified three references that must be pieced together to allegedly disclose the claimed invention yet still require a statement that one element noticeably missing from the three cited references is "old and known" to one of ordinary skill in the art.

Notwithstanding the foregoing, the basis for the statement that an element is "old and known" must be set forth explicitly. *Id.* "The Office Action must provide specific factual findings predicated on sound technical and scientific reasoning to support [the] conclusion of common knowledge." *Id.* (citations omitted). Applicant is unable to adequately traverse the present rejection due to the lack of any basis for which the Office Action regarded the material as subject to the statement that the missing element is "old and known." Applicant is unaware, and the record is devoid, of any evidence that the material subject to the statement was common knowledge or well-known in the art when the invention was made. Accordingly, Applicant respectfully requests documentary evidence supporting the statement should the rejection under § 103(a) be maintained. "If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding." *Id.* (citing 37 C.F.R. § 1.104(d)(2)). For at least these reasons, the statement that this element is old and known is improper, and

Applicant respectfully requests its withdrawal or submission of proper documentary evidence.

Even assuming the statement is proper, *Parker, Shannon, and Netopia* do not disclose other aspects of the claimed invention. For instance, none of the references disclose creating a user account associated with at least one of the plurality of levels that controls filtering and monitoring applied to other user accounts associated with levels below the one associated with the user account. The Office Action recognizes this shortfall and states that “implementing group level access technology to manage system access is old and known to one of ordinary skill in the art.” Even assuming this statement to be correct (an assumption with which Applicant disagrees), it is directed to a limitation that does not appear in claim 2. Claim 2 calls for a hierarchy that defines a plurality of levels, where each level is able to inherit any filtering and monitoring of levels above and where a user account associated with one level controls filtering and monitoring applied to other user accounts associated with levels below the level associated with the user account. This is not the same thing as implementing group level access technology to manage system access. Group level access technology does not provide for the ability of a level of a hierarchy to inherit any filtering and monitoring of the levels above and where a user account associated with one level controls filtering and monitoring applied to other user accounts associated with other levels below the one level.

Even if the statement were directed to a limitation found in claim 2, it is improper. Rejections based on such statements should be judiciously applied and “should be rare.” MPEP § 2144.03. “[T]he notice of facts beyond the record which may be taken by the examiner must be ‘capable of such instant and unquestionable demonstration as to defy

dispute.” *Ahlert*, 424 F.2d at 1091. It is inappropriate for an Office Action to take official notice of facts without citing a prior art reference where the facts asserted to be well-known are not capable of instant and unquestionable demonstration as being well-known. MPEP § 2144.03. It is even more inappropriate in the instant case where the Office Action has identified three references that must be pieced together to allegedly disclose the claimed invention yet still require a statement that one element noticeably missing from the three cited references is old and known to one of ordinary skill in the art.

Notwithstanding the foregoing, the basis for the statement that an element is “old and known” must be set forth explicitly. *Id.* “The Office Action must provide specific factual findings predicated on sound technical and scientific reasoning to support [the] conclusion of common knowledge.” *Id.* (citations omitted). Applicant is unable to adequately traverse the present rejection due to the lack of any basis for which the Office Action regarded the material as subject to the statement that the missing element is “old and known.” Applicant is unaware, and the record is devoid, of any evidence that the material subject to the statement was common knowledge or well-known in the art when the invention was made. Accordingly, Applicant respectfully requests documentary evidence supporting the statement should the rejection under § 103(a) be maintained. “If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding.” *Id.* (citing 37 C.F.R. § 1.104(d)(2)). For at least these reasons, the statement that this element is old and known is improper, and Applicant respectfully requests its withdrawal or submission of proper documentary evidence.

Even assuming the statements that certain subject matter is “old and known” are both directed to limitations found in claim 2 and are proper, the Office Action nonetheless fails to provide adequate support or evidence for the rationale to combine the references. For one reason, it would not have been obvious to one of ordinary skill in the art to modify *Parker* by adopting the teachings of *Shannon*, as alleged by the Office Action. As set forth above, *Shannon* discloses a network device that is interconnected between a first and second network. *Shannon*, col. 3, lines 35-45. The first network is a LAN, while the second network is a WAN. *Id.* Referring to Figure 1, for instance, *Shannon* discloses the users of the system (50, 51, 52, and 53) connecting to the Internet (45) through the network device. *Shannon* touts the advantages of such a system in several locations. *See, e.g., id.* at col. 6, lines 4-14 & col. 12, lines 16-36.

Parker, on the other hand, discloses a plurality of users, including those on a LAN and those not on the LAN, connected to the system. *Parker*, ¶¶ 21, 24, & 26. Referring to Figure 1, for example, *Parker* discloses both staff (112) within the LAN and end users (102) outside of the LAN connected to the system. End users (102) are coupled to the Internet in order to connect to the system. *See* Figure 1. Incorporating the network device of *Shannon* into the distance learning system of *Parker* would be ineffective to provide access control for at least the portion of the users coupled to the Internet outside of the LAN as disclosed in *Parker*. For instance, a user connected outside of the LAN disclosed in *Shannon*, such as the end users (102) in Figure 1 of *Parker*, would not be subject to the access control policy of the network device disclosed in *Shannon*. This is because their requests would not pass through the device. Accordingly, incorporating the network device of *Shannon* into the learning system of *Parker* would not be an appropriate solution to the problem of access

control as described in *Shannon*. Incorporating the network device of *Shannon* into *Parker* would render it ineffective or inoperable for its intended purpose. Therefore, it would not have been obvious to one of ordinary skill in the art to modify *Parker* by adopting the teachings of *Shannon* to provide access control to users of the claimed invention.

Furthermore, it appears that the device disclosed in *Netopia* performs the same or similar functions as those performed by the device disclosed in *Shannon*. Thus, there would be no reason for one of ordinary skill in the art to combine the device disclosed in *Netopia* with a system that includes the device disclosed in *Shannon*. Instead, one of ordinary skill would replace one device with the other at most. Therefore, it would not be obvious to combine the disclosure of *Netopia* with that of *Shannon*.

For at least these reasons, claim 2 is not obvious in view of *Parker*, *Shannon*, and *Netopia*. The Office Action lacks any factual support for a rationale that it would have been obvious to combine *Parker*, *Shannon*, and *Netopia*. The Office Action also lacks any factual support for the statements that certain subject matter is old and known. Applicant therefore requests that documentary evidence necessary to support such allegations be contained in the next action should the rejection be maintained. See MPEP § 2144.03. Accordingly, the Office Action has failed to present an acceptable case of obviousness pursuant to 35 U.S.C. § 103(a). Claims 3-15 depend, either directly or indirectly from claim 2, and recite limitations in addition thereto. Accordingly, these claims are not unpatentable for the same reasons that the invention set forth in claim 2 is not unpatentable over *Parker*, *Shannon*, *Netopia*, and the statements contained in the Office Action. Accordingly, Applicant respectfully requests withdrawal of the cited rejection and favorable action by the Examiner.

4. Conclusion

Statements that at least one element of each of the pending claims is “old and known” in the art, which form a part of the basis of rejection under § 103(a), are improper. Nonetheless, any combination of *Parker*, *Shannon*, *Netopia* and these statements does not disclose at least one limitation of each of the pending claims as explained above. Moreover, it would not have been obvious to combine *Parker*, *Shannon*, and *Netopia* for at least the reasons set forth above. The pending claims are not, therefore, obvious in view of these references. As all outstanding issues have been addressed, Applicant respectfully requests withdrawal of the cited rejections and favorable action by the Examiner. The Examiner is invited to contact the undersigned in an effort to discuss and resolve any remaining issues.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH, LLP.

/s/ Jeremy C. Whitley

Jeremy C. Whitley
Registration No. 58,775
ip@nelsonmullins.com
1320 Main Street | Suite 1700
Columbia, South Carolina 29201
Office: (803) 255-9764
Fax: (803) 255-9831